

BRIEFING NOTE - IRVIN BILL - S. 1438

25X1A The [REDACTED] case illustrates some of the problems which are unique to this Agency if it is taken into the courts.

25X1A Another case, [REDACTED] illustrates the differences between the court's treatment of a situation under current law and a situation that would exist if the Irvin bill were passed in its present form.

Sec. 4 of the Irvin bill would authorize an applicant or employee who thinks he has been the victim of a violation of the bill to take his case to the Federal courts in an action against the superior who violated the act. The Director now has the statutory authority to terminate any employee when he believes such termination necessary or advisable in the interests of the United States.

25X1A [REDACTED] was involved in a sensitive and complicated intelligence operation in Europe. He mishandled it rather badly and his behavior then and later caused him to become a serious problem. After extensive investigation and hearings, the Director terminated him under his statutory authority. [REDACTED] filed suit

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25X1A in the Federal court for reinstatement. The Government moved for summary judgment, filing only an affidavit that the Director found the termination necessary and advisable in the interests of the United States. The motion was granted and the case dismissed. [REDACTED] lawyer tried to file an affidavit going into the facts of the case, and the court reprimanded him for this attempt. The Supreme Court declined to accept an appeal.

25X1A Under the Irvin bill, [REDACTED] could have sued his superior or superiors, alleging violations of other provisions of the bill and setting forth in full his version of the facts of the case. The court would have to accept jurisdiction of the case on the merits, and the motion for summary judgment would almost certainly not be granted. The Agency would then be in a quandary. Either it would have to refute [REDACTED] allegations by giving its version of the occurrences, which would involve very sensitive intelligence information, or it would have to invoke executive privilege and instruct the defendants not to put in such a detailed defense, thereby leaving 25X1A [REDACTED] claim largely undisputed.

The threat to security is obvious, and the further threat lies in the fact that any applicant or employee who wished to harass the Agency could bring such a suit in Federal court or

could go before the Board of Employees' Right provided for in Sec. 5 of the Irvin bill. It would not take many such actions to indicate to an antagonistic intelligence service the opportunities for deliberate harassment through suits by applicants planted to claim that their rights have been violated under the act.